

***United States Court of Appeals
for the
District of Columbia Circuit***



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Court of Appeals of the District of Columbia

JANUARY TERM, 1927.

No. 4568.

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No. —, SPECIAL CALENDAR.

ANTONINO SAMBATARO, APPELLANT,

vs.

DOMENICO CAFFO AND ARENA GRAZIA CAFFO.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED FEBRUARY 16, 1927.

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Court of Appeals of the District of Columbia

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APPELLEES.

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Court of Appeals of the District of Columbia

No. 4563.

ANTONINO SAMBATARO, Appellant,

vs.

DOMENICO CAFFO et al.

a Supreme Court of the District of Columbia.

Equity. No. 46397.

ANTONINO SAMBATARO, Plaintiff,

vs.

DOMENICO CAFFO and ARENA GRAZIA CAFFO, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed December 9, 1926.

In the Supreme Court of the District of Columbia.

Equity. No. 46397.

ANTONINO SAMBATARO

vs.

DOMENICO CAFFO and ARENA GRAZIA CAFFO.

The bill of complaint of Antonino Sambataro respectfully shows to the court as follows:

1. The plaintiff is a citizen of the United States and resident of the District of Columbia and brings this suit in his own right.

2. The defendants are citizens of the United States and residents of the District of Columbia and are sued in their own rights.

3. On the 16th day of August, 1922, the plaintiff and defendants entered into an agreement or lease, copy of which is attached hereto and marked Exhibit "A" and prayed to be read as a part hereof, by which the defendants let and leased to the plaintiff, premises known as 347 Cedar St., Takoma Park, D. C., which is otherwise known as lot eight hundred and seven (807) square three thousand, one hundred and eighty seven (3187) of the District of Columbia, for the term of three years, commencing on the first day of September, 1922, with rent payable in monthly installments of \$52.50 at 812 Florida Ave., N. W., which was the place of business of the defendants. Among other covenants of said lease was one as follows:

2 "And it is further agreed between the parties of the first part and the party of the second part that this lease may be renewed for three more years at the expiration of this present lease, and is transferable when the business is sold."

4. After the making and execution of said lease the defendants directed the plaintiff to pay the rent reserved in said lease to Stone & Fairfax, Inc., and thereafter, in June of 1925, the defendants left Washington and the United States and were away from the Country until October of 1926, on a visit to Italy. The plaintiff is informed and believes and expects to prove at the trial of this cause, that the said Stone & Fairfax, Inc., were duly constituted the agents of the defendants for the handling of said property and all things appertaining thereto.

5. On or about August 15, 1925, the plaintiff demanded of the said Stone & Fairfax, a renewal of said lease, for three years from its expiration and was told by the said Stone & Fairfax that they would take the matter up with the defendants, but that there was no necessity for a renewal of said lease, because the lease renewed itself, by reason of its terms. Thereafter, the plaintiff continued to

pay his rent as previously to Stone & Fairfax and in due course of mail received a letter from said Stone & Fairfax, dated October 29, 1925, a copy of which is attached and marked Exhibit "B", in which said Stone & Fairfax, on behalf of the defendants, claimed that the said lease could be renewed but that as the renewal clause did not mention the rent, that the defendants were justified in raising the rent and that in taking this position they were acting on instructions of the owner, meaning the defendants herein, for whom the said Stone & Fairfax were then and there acting. At the same time the said Stone & Fairfax sent to the plaintiff an unsigned form — lease, offering to renew the said lease for three years from the 1st day of November, 1925, at \$65 a month and another form of lease, unsigned, offering to lease the said property to the plaintiff, as a monthly tenant at \$65 per month, both of which the plaintiff declined to sign. In doing so, however, he relied on the statements of the said Stone & Fairfax that it was unnecessary to have a renewal of said original lease, because the same renewed itself.

6. Thereafter, this plaintiff continued to pay his rent in monthly installments to the said Stone & Fairfax and continued to pay his rent in said monthly installments to Stone & Fairfax until and including October, 1926. In October, 1926, he received a demand for the rent from the defendants and thereafter, in November and December, 1926, paid the rent as due under the said lease, amounting to \$52.50 per month, to the defendants. That the plaintiff, at all times, acting under the terms of said lease, has paid the defendants the sum of \$52.50 per month, under the terms thereof, relying upon the renewal clause of said lease, as he had been assured by Stone & Fairfax, was in full force and virtue and that he had a good lease until September 1st, 1928.

7. Relying upon said lease and the statements made by Stone & Fairfax, as aforesaid, plaintiff has equipped the said premises with valuable shoe machinery, has purchased up-to-date and modern equipment and has built up a profitable trade for himself, in shoe repairing, at said premises.

8. On or about November 15, 1926, the defendant, Domenico Caffo, informed the plaintiff, that he, the said defendant, desired to have and recover possession of said premises,

and that the reason he desired to recover possession was that he the said Domenico Caffo, intended to open a shoe repairing place in said premises, the result of which would be that the said defendant, Domenico Caffo, would get possession of the business which the plaintiff has built up at great cost and expense.

9. Prior to August 16, 1922, plaintiff had purchased a shoe repairing business, located at 347 Cedar Street, Takoma Park, D. C. and among other assets purchased by him was a lease on said property, which extended for approximately a year after August 16, 1922 and was signed by a prior owner of the premises. The rental reserved by said lease was \$40 per month. On or about August 16, 1922, although his then lease had not expired, the defendants demanded an increased rental, so that the rent would amount to \$52.50 and rather than have a law suit about the difference, plaintiff acquiesced in the increased rental, provided the defendant would give him a three years' lease, with renewal of three years and as a result the document attached and marked Exhibit "A" was prepared and executed by the parties.

10. Plaintiff avers that the present attempt to get possession of said property, as hereinafter set forth, is in furtherance of the plan to open another shoe repairing place by the defendant, Domenico Caffo, the result of which will be that the business and good will, which the plaintiff has built up in said property, by reason of the renewal clause of said lease and the assurance of Stone & Fairfax, as aforesaid, will be turned over to the defendants, who will receive the benefit thereof, contrary to said renewal clause and contrary to said assurance and without compensation to this plaintiff.

11. On November 30, 1926, the defendants served upon the plaintiff a notice to quit, dated said November 30, 1926, a copy of which is attached and marked Exhibit "C," whereby the plaintiff was notified to quit and move from said premises on the day of the month on which the tenancy commenced to run, which shall first occur after the expiration of thirty days after the service of this notice. Plaintiff avers that it is the intention of the defendants to bring a suit in the Landlord and Tenant Division of the Municipal Court, for the purpose of obtaining possession of said property.

12. That the plaintiff has demanded of the defendants a renewal of said lease and the said defendants have declined same.

Wherefore, the plaintiff prays—

1. That a United States writ of subpoena issue out of this Honorable Court, commending the defendants to appear herein and answer the exigencies of this bill.

2. That the defendants be enjoined, permanently and pendente lite from bringing action in the Municipal Court or elsewhere, for the recovery of possession of said real estate, until the expiration of the renewal term granted by said lease, to wit, September 1st, 1928, so long as the plaintiff pays the rent reserved by said lease.

3. That if need be, the defendants be required, by process of this court, to execute a renewal of said lease, in accordance with its tenor.

4. That all actions looking to the repossession by the defendants of said property be enjoined permanently and pendente lite.

5. For such further and other relief as the nature of the case may require and to the court seem meet and just.

ANTONINO SAMBATARO.

DISTRICT OF COLUMBIA, ss:

Antonino Sambataro being first duly sworn on oath deposes and says that he has read the foregoing bill by him subscribed and verily believes the facts stated therein to be true.

ANTONINO SAMBATARO.

6 Subscribed and sworn to before me this 8 day of
December, 1926.

[SEAL.]

J. ADDISON HICKS,
Notary Public, D. C.

H. WINSHIP WHEATLEY,
Attorney for Plaintiff.

EXHIBIT "A."

This lease made by and between Domenico Caffo and his wife, Grazia Arena Caffo, parties of the first part, and Antonino Sambataro, party of the second part:

Witnesseth, That the parties of the first part does hereby grant and demise to the party of the second part premises #347 Cedar St. Takoma Park, D. C., for the use of a shoe-making shop for the term of three years, commencing on the first day of September, 1922, for the sum of Six Hundred Thirty and no/100 Dollars per annum, payable in monthly instalments of Fifty Two and 50/100 (\$52.50) Dollars in advance, at 812 Florida Ave. N. W. Washington, D. C., the first payment to be made on the first day of September 1922, and a like sum on the first day of each and every month thereafter.

And the said party of the second part covenant that he will not sublet the said premises without the consent in writing of said parties of the first part; that he will not use said premises for any unlawful purposes; that he will pay the said rent as above stated, and all bills for gas used on the premises, making the necessary deposit at the gas office to secure same; that he will pay all water rents for said premises during his tenancy thereof; that all repairs rendered necessary by the negligence of the party of the second part shall be paid for by him, and that he will
7 surrender the same at the expiration of his tenancy in good order, ordinary wear and tear and damage by the act of God or public enemy excepted.

And it is further agreed, that if any instalment of the rent hereinbefore reserved be not paid at the time agreed upon, although no demand shall have been made for the same or if any of the covenants herein contained be not performed according to their full tenor and effect, then it shall be lawful for the said parties of the first part to terminate this tenancy by a notice in writing of thirty days to that effect, which notice may be served on the party of the second part in person, or by leaving the same on the premises; and upon the expiration of the said thirty days, the tenancy created by this Lease shall forever cease and determine, and the said party of the first part may re-enter on the said premises and repossess the same, and avail himself of the remedies provided by the Code of law regulating proceedings between landlord and tenant, without further notice, all other notice in such case being hereby expressly waived.

And it is further agreed, that no waiver of one breach of any *any* covenant herein shall be construed to be a waiver of the covenant itself, or of any subsequent breach thereof.

And it is further agreed between the parties of the first part and the party of the second part that this lease may be renewed for three more years at the expiration of this present lease, and is transferable when the business is sold.

In testimony whereof, the said parties have hereunto signed their names and affixed their seals, this 16th day of August A. D. 1922.

8 DOMENICO CAFFO. [SEAL.]
 ARENA GRAZIA CAFFO. [SEAL.]
 ANTONINO SAMBATARO.

Witnessed by—

J. SCHIAVONE.

DISTRICT OF COLUMBIA, ss:

I, Joseph Schiavone, a Notary Public, in and for the District of Columbia, do hereby certify that Domenico Caffo and his wife, Grazia Arena Caffo and Antonino Sambataro parties to a certain deed of lease bearing date on the 16th day of August, 1922, and hereto annexed, personally appeared before me in said District, the said Domenico Caffo and his wife, Grazia Arena Caffo and Antonino Sambataro, being personally well known to me as the persons who executed the said Deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this 16th day of August 1922.

J. SCHIAVONE.

EXHIBIT "B."

Mr. Antonio Sambataro,
347 Cedar Street,
Takoma Park, D. C.

DEAR SIR:

I am herewith attaching a lease for your signature and prompt return.

I have carefully read your expired lease and therein it is specified same can be renewed, however it does not men-

tion the rent. I am therefore acting on instructions of the owner in asking the increase in rent.

Yours very truly,

STONE & FAIRFAX,
By F. E. LOVN.

9

EXHIBIT "C."

Mr. Antonio Sambataro,
247 Cedar Street N. W.,
Takoma Park, D. C.

DEAR MR. SAMBATARO:

As we desire to have again and repossess premises known as number 347 Cedar Street, N. W., Takoma Park, D. C., being lot 807, square 3187, which you now hold of us as a tenant by sufferance, we hereby give you notice to move from and quit said premises on the day of the month from which your tenancy commenced to run, which shall first occur after the expiration of thirty days after the service of this notice.

Yours very truly,

DOMENICO CAFFO.
ARENA GRAZIA CAFFO.

Motion to Dismiss.

Filed December 30, 1926.

* * * * *

Come now the defendants in the above entitled cause, by their attorneys, and move the Court to dismiss the bill of complaint filed herein on the following grounds:

1. That said bill does not show any facts entitling the plaintiff to the relief prayed or any relief whatsoever.

2. That said bill does not state any facts giving to a court of equity, jurisdiction to grant the relief prayed or any relief whatsoever.

3. Said bill of complaint shows on its face that the plaintiff, if entitled to any relief, has a plain, complete and adequate remedy at law.

10 4. For other reasons apparent on the face of the
bill.

Wherefore, Defendants pray that said bill of complaint be dismissed and that they be dismissed with their costs and charges in this behalf sustained.

COLLADAY, CLIFFORD & PETTUS,
JOSEPH C. McGARRAGHY,
Attorneys for Defendants.

To H. Winship Wheatley, Esquire:

SIR:

Please take notice that the above motion will be calendared for hearing before the Justice holding an Equity Court on Friday, January 7th, 1927, at ten o'clock, A. M., or as soon thereafter as counsel can be heard.

COLLADAY, CLIFFORD & PETTUS,
JOSEPH C. McGARRAGHY,
Attorneys for Defendants.

Service of copy of the above motion acknowledged this 30 day of December, A. D. 1926.

H. WINSHIP WHEATLEY,
Attorney for Plaintiff.

Order Overruling Motion to Dismiss, etc.

Filed January 24, 1927.

* * * * *

This cause came on to be heard upon the motion to dismiss the bill of complaint and this court being of the opinion that the Municipal Court has jurisdiction under Section 1535 C of the Code of Law for the District of Columbia, to consider a plea upon equitable grounds based upon the facts set forth in the bill of complaint, concurrently
11 with this court, it is by the court this 24th day of January, 1927,

Ordered as follows:

1. That said motion to dismiss be and the same is hereby overruled.

2. That this cause be stayed to await the action of the Municipal Court, on such plea being filed.

JAMES F. SMITH,
Acting Justice.

O K as to form.

J. C. McGARRAGHY,
Atty. for Defendants.

Order Allowing Special Appeal.

Filed February 8, 1927.

* * * * *

On consideration of the petition for the allowance of a Special Appeal in the above entitled cause from the order of the Supreme Court of the District of Columbia entered therein on January 24, 1927, It is ordered by the Court that said Special Appeal be, and the same is, hereby allowed.

Per Mr. CHIEF JUSTICE MARTIN,
February 5, 1927.

A True Copy.

Test:

[SEAL.] HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Assignments of Error.

Filed February 8, 1927.

* * * * *

The appellant for assignments of error says as follows:

12 1. The court erred in staying the action in this case to await the action of the Municipal court on a plea being filed in that court.

2. The court erred in holding that the passage of the Act of March 4, 1923 (42 Statutes at Large, Part 1 page 1506) making section 1535 C of the District of Columbia

Code applicable to proceedings in the Municipal Court, vested the Municipal Court with concurrent jurisdiction with the Supreme Court of the District of Columbia of the cause of action stated in the bill of complaint and in staying this cause, awaiting the action of the Municipal Court.

3. The court erred in declining to enjoin the action in the Municipal Court, as prayed in the bill.

4. The court erred in staying this cause.

5. The court erred in not requiring specific performance of the renewal covenant in the plaintiff's lease.

6. The court erred in holding that this action should be stayed, even though section 1535C of the Code be construed as vesting in the Municipal Court the complete powers of a Court of Equity.

7. The court erred in holding that even though equity had jurisdiction, it ought not to exercise it.

8. The court erred in not holding that the Act of Congress, extending 1535 C to the Municipal Court, did not affect the jurisdiction of the Supreme Court, nor render it improper for it to exercise its jurisdiction.

9. The court erred in not holding that when equity had taken hold of the matter it should do complete justice between the parties.

10. The court erred in not holding that where two courts have concurrent jurisdiction of the same matter the court first acquiring jurisdiction should carry it to its end.

11. The court erred in not holding that the tenant's right to a specific performance of a renewal covenant was cognizable in equity only and granting relief accordingly.

12. The court erred in not holding that since the tenant's right to a specific performance of a renewal covenant was cognizable in equity only, that it should grant the plaintiff the relief he prayed.

13. The Court erred in not holding that where a Court of Chancery has jurisdiction, it should retain it for all purposes and do complete justice between the parties.

14. The court erred in passing so much of the order of January 24, 1927, as stayed the equity cause to await the action in the Municipal Court.

H. WINSHIP WHEATLEY,
Attorney for Appellant.

Designation of Record on Appeal.

Filed February 8, 1927.

* * * * *

The Clerk will please include in the transcript on appeal the following documents:

1. Bill of Complaint filed by the plaintiff.
2. Motion to Dismiss, filed by the defendants.
3. Order of Court passed January 24, 1927.
4. Assignments of Error.
5. Order from the Court of Appeals, allowing special appeal.

H. WINSHIP WHEATLEY,
Attorney for Appellant.

14 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 46397 in Equity wherein Antonino Sambataro is Plaintiff and Domenico Caffo and Arena Grazia Caffo are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the the City of Washington, in said District, this 14th day of February, 1927.

[Seal of Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4563. Antonio Sambataro, appellant, vs. Domenico Caffo et al. Court of Appeals, District of Columbia. Filed Feb. 16, 1927. Henry W. Hodges, clerk.

